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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

.No. 82

THE UNITED STATES OF AMERICA, APPELLANT

VS.

F. W. DARBY LUMBER COMPANY AND FRED W. DARBY

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF GEORGIA**

FILED MAY 18, 1940

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INDEX

	Original	Print
Record from D. C. U. S., Southern District of Georgia	1	1
Caption [omitted in printing]	1	1
Indictment	2	1
Defendant's demurrer	23	14
Opinion of Court, Barrett, J.	25	16
Judgment and order sustaining demurrer	30	21
Petition for appeal	31	21
Order allowing appeal	32	22
Assignment of errors	33	22
Citation [omitted in printing]	41	23
Praecipe for transcript of record	42	24
Clerk's certificate to record. [omitted in printing]	43	24
Statement of points to be relied upon and designation of record to be printed	44	24

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1 [Caption omitted.]

2 In United States District Court for the Southern District of
Georgia

August Adjourned Term, 1939

No. 9175

UNITED STATES OF AMERICA

vs.

F. W. DARBY LUMBER COMPANY, AND FRED W. DARBY

Indictment

Filed Nov. 2, 1939

Offense:

Violation of Section 15 (a) (2), Fair Labor Standards Act of 1938:
Failure to pay minimum wage (Counts 1 to 3, inclusive). Failure
to pay compensation for overtime (Counts 4 to 11, inclusive).

Violation of Section 15 (a) (5), Fair Labor Standards Act of 1938:
Failure to keep record (Count 12).

Violation of Section 15 (a) (1), Fair Labor Standard Act of 1938:
Interstate shipment of goods with knowledge (Counts 13 to 16,
inclusive). Interstate shipment of goods produced without payment
of minimum wage or compensation for overtime (Counts 17 to 19,
inclusive).

3 [Title omitted.]

INDICTMENT

The Grand Jurors of the United States of America, duly empaneled
and sworn in the District Court of the United States for the Southern
District of Georgia, and inquiring for that District, at the adjourned
term of said Court, upon their oath present that:

1. F. W. Darby Lumber Company was at all times hereinafter men-
tioned, and now is, an unincorporated company, the ownership of
which was, at all times hereinafter mentioned, and now is, vested in
Fred. W. Darby.

2. Fred. W. Darby, of Statesboro, in the County of Bulloch, within
the Southern District of Georgia, and the jurisdiction of this court,
is made a defendant herein. The defendant does and did, at all times
hereinafter referred to, own and control the F. W. Darby Lumber
Company, and was, and is, in active control of the management of the
said F. W. Darby Lumber Company, and was, and is, in charge of
its books and records and did and does superintend and direct the

making of entries therein, including entries of hours worked by and wages paid to persons employed by the said F. W. Darby Lumber Company at its principal place of business at Statesboro, Georgia.

3. The F. W. Darby Lumber Company, and the defendant, Fred. W. Darby, were at all times hereinafter referred to, and now are, engaged in the business of buying, procuring, obtaining, producing, manufacturing, and selling lumber. In the course of said business the defendant receives orders for lumber; procures and obtains raw material; the defendant seams, cuts, clips, dries, grades, tops, glues, trims, sands, counters, and performs other operations necessary and incident to the buying, procuring, obtaining, producing, and manufacturing of lumber; the defendant bundles, packs, and ships lumber bought, procured, obtained, produced, and manufactured.

4. At all times hereinafter referred to, a large proportion of the lumber bought, procured, obtained, produced, and manufactured by the defendant was bought, procured, obtained, produced, and manufactured by him pursuant to orders received by the defendant from customers without the State of Georgia. The said lumber was bought, procured, obtained, produced, and manufactured with the intent on the part of the defendant that the said lumber after having been bought, procured, obtained, produced, and manufactured would be sold, shipped, transported, and delivered to and the said lumber was sold, shipped, transported, and delivered to customers without the State of Georgia. In buying, procuring, obtaining, producing, and manufacturing the said lumber, the defendant produced and transported goods for interstate commerce within the meaning of the Fair Labor Standards Act of 1938.

5. The defendant, Fred. W. Darby, at all times hereinafter referred to, acted and now acts, both directly and indirectly in his own interest and in the interest of the F. W. Darby Lumber Company, and in relation to his own employees, and is thus an employer of the said employees within the meaning of the Fair Labor Standards Act of 1938.

6. The defendant, Fred. W. Darby, at all times hereinafter referred to, employed and permitted and suffered to work in the production and manufacture of goods, to wit, lumber, persons who were employees within the meaning of the Fair Labor Standards Act of 1938.

7. At all times hereinafter referred to a large proportion of the said employees were engaged in the production and manufacture of goods, to wit, lumber for interstate commerce within the meaning of the Fair Labor Standards Act of 1938.

8. When used in this indictment, the word "employed" shall be taken to mean "employed or suffered or permitted to work," the words "employee" and "employees" shall be taken to include any person employed, the words "employed in the production of goods" shall be taken to mean "employed in the buying, procuring, obtaining, producing, manufacturing, handling, and in any other manner working on goods produced, and employed in any process or occupation

necessary to the production thereof," and the very "to employ" shall include "to act directly or indirectly in the interest of an employer in relation to an employee."

9. The defendant Fred. W. Darby, at F. W. Darby Lumber Company at Statesboro, in the County of Bulloch, within the Southern District of Georgia, and within the jurisdiction of this court, did, within the meaning of the Fair Labor Standards Act of 1938, employ and suffer and permit to work in the buying, procuring, obtaining, producing, and manufacturing of goods, to wit, lumber, for interstate commerce, one Levy Weaver during the workweek beginning March 3, 1939, and ending March 9, 1939, and the said defendant in Statesboro, in the County of Bulloch, within the Southern District of Georgia, and within the jurisdiction of this court, on or about March 11, 1939, did unlawfully and wilfully fail to pay to the said Levy Weaver wages at a rate not less than twenty-five cents (25¢) an hour for the said work for the said workweek; that is to say, the said defendant, at the time and place aforesaid, did pay to the said Levy Weaver wages at a rate less than twenty-five cents (25¢) an hour for the said work for the said workweek.

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such cases made and provided (Fair Labor Standards Act of 1938).

6 COUNT TWO

And the Grand Jurors aforesaid, upon their oath aforesaid, to further present that:

1. Each and every allegation contained in paragraphs 1 to 8, inclusive, of the first count of this indictment is here realleged with the same force and effect as if here set forth in full.

2. The defendant, Fred. W. Darby, at F. W. Darby Lumber Company, at Statesboro, in the County of Bulloch, within the Southern District of Georgia, and within the jurisdiction of this court, did, within the meaning of the Fair Labor Standards Act of 1938, employ and suffer and permit to work in the buying, procuring, obtaining, producing, and manufacturing of goods, to wit, lumber, for interstate commerce, one Roger Stone during the workweek beginning August 11, 1939, and ending August 17, 1939, and the said defendant, in Statesboro, in the County of Bulloch, within the Southern District of Georgia, and within the jurisdiction of this court, on or about August 26, 1939, did unlawfully and wilfully fail to pay to the said Roger Stone wages at a rate not less than twenty-five cents (25¢) an hour for the said work for the said workweek; that is to say, the said defendant, at the time and place aforesaid, did pay to the said Roger Stone wages at a rate less than twenty-five cents (25¢) an hour for the said work for the said workweek.

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such cases made and provided (Fair Labor Standards Act of 1938).

COUNT THREE

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that:

1. Each and every allegation contained in paragraphs 1 to 8, inclusive, of the first Count of this indictment is here realleged with the same force and effect as if here set forth in full.

2. The defendant, Fred. W. Darby, at F. W. Darby Lumber Company, at Statesboro, in the County of Bulloch, within the Southern District of Georgia, and within the jurisdiction of this court, did, within the meaning of the Fair Labor Standards Act of 1938, employ and suffer and permit to work in the buying, procuring, obtaining, producing, and manufacturing of goods, to wit, lumber, for interstate commerce, one Carl Riggs during the workweek beginning August 11, 1939, and ending August 17, 1939, and the said defendant, in Statesboro, in the County of Bulloch, within the Southern District of Georgia, and within the jurisdiction of this court, on or about August 26, 1939, did unlawfully and wilfully fail to pay to the said Carl Riggs wages at a rate not less than twenty-five cents (25¢) an hour for the said work for the said workweek; that is to say, the said defendant, at the time and place aforesaid, did pay to the said Carl Riggs wages at a rate less than twenty-five cents (25¢) an hour for the said work for the said workweek.

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such cases made and provided (Fair Labor Standards Act of 1938).

COUNT FOUR

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that:

1. Each and every allegation contained in paragraphs 1 to 8, inclusive, of Count One of this indictment is here realleged with the same force and effect as if here set forth in full.

2. The defendant Fred. W. Darby, at F. W. Darby Lumber Company, at Statesboro, in the County of Bulloch, within the Southern District of Georgia, and within the jurisdiction of this court, did, within the meaning of the Fair Labor Standards Act of 1938, employ and suffer and permit to work in the buying, procuring, obtaining, producing, and manufacturing of goods, to wit, lumber, for interstate commerce, one Dave Hutchinson for a workweek longer than forty-four (44) hours, beginning February 24, 1939, and ending March 2, 1939, and the said defendant at Statesboro, in the County of Bulloch, within the Southern District of Georgia, and within the jurisdiction of this court, on or about March 11, 1939, did unlawfully and wilfully fail to pay to the said Dave Hutchinson wages for the excess hours over forty-four (44) worked by the said Dave Hutchinson during the workweek aforesaid, at a rate not less

than one and one-half ($1\frac{1}{2}$) times the regular rate, at which the said Dave Hutchinson was employed; that is to say, the said defendant did employ and suffer to permit to work in the production of goods, to wit, lumber, for interstate commerce, the said Dave Hutchinson for a workweek longer than forty-four (44) hours, beginning February 24, 1939 and ending March 2, 1939, and at the time and place aforesaid, did pay compensation to the said Dave Hutchinson for his employment in excess of forty-four (44) hours worked during the aforesaid workweek at a rate less than one and one-half ($1\frac{1}{2}$) times the regular rate at which he was employed.

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such cases made and provided (Fair Labor Standards Act of 1938).

COUNT FIVE

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that:

1. Each and every allegation contained in paragraphs 1 to 8, inclusive, of Count One of this Indictment is here realleged with the same force and effect as if here set forth in full.

2. The defendant Fred. W. Darby, at F. W. Darby Lumber Company, at Statesboro, in the County of Bulloch, within the Southern District of Georgia, and within the jurisdiction of this Court, did, within the meaning of the Fair Labor Standards Act of 1938, employ and suffer and permit to work in the buying, procuring, obtaining, producing, and manufacturing of goods, to wit, lumber, for interstate commerce, one Henry C. Cowart for a workweek longer than forty-four (44) hours, beginning February 24, 1939, and ending March 2, 1939, and the said defendant, at Statesboro, in the County of Bulloch, within the Southern District of Georgia, and within the jurisdiction of this court, or on or about March 11, 1939, did unlawfully and wilfully fail to pay to the said Henry C. Cowart wages for the excess hours over forty-four (44) worked by the said Henry C. Cowart during the workweek aforesaid, at a rate not less than one and one-half ($1\frac{1}{2}$) times the regular rate, at which the said Henry C. Cowart was employed; that is to say, the said defendant did employ and suffer and permit to work in the production of goods, to wit, lumber, for interstate commerce, the said Henry C. Cowart for a workweek longer than forty-four (44) hours, beginning February 24, 1939, and ending March 2, 1939, and at the time and place aforesaid, did pay compensation to the said Henry C. Cowart for his employment in excess of forty-four (44) hours worked during the aforesaid workweek at a rate less than one and one-half ($1\frac{1}{2}$) times the regular rate at which he was employed.

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such cases made and provided (Fair Labor Standards Act of 1938).

COUNT SIX

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that:

1. Each and every allegation contained in paragraphs 1 to 8, inclusive, of Count One of this Indictment is here realleged with the same force and effect as if here set forth in full.

2. The defendant Fred W. Darby, at F. W. Darby Lumber Company, at Statesboro, in the County of Bulloch, within the Southern District of Georgia, and within the jurisdiction of this Court, did, within the meaning of the Fair Labor Standards Act of 1938, employ and suffer and permit to work in the buying, procuring, obtaining, producing, and manufacturing of goods, to wit, lumber, for interstate commerce, one Jim Allen for a workweek longer than forty-four (44) hours, beginning February 24, 1939, and ending March 2, 1939, and the said defendant, at Statesboro, in the County of Bulloch, within the Southern District of Georgia, and within the jurisdiction of this court, on or about March 11, 1939, did unlawfully and wilfully fail to pay to the said Jim Allen wages for the excess hours over forty-four (44) worked by the said Jim Allen during the workweek aforesaid, at a rate not less than one and one-half ($1\frac{1}{2}$) times the regular rate, at which the said Jim Allen was employed; that is to say, the said defendant did employ and suffer and permit to work in the production of goods, to wit, lumber, for interstate commerce, the said Jim Allen for a workweek longer than forty-four (44) hours, beginning February 24, 1939, and ending March 2, 1939, and at the time and place aforesaid, did pay compensation to the said Jim Allen for his employment in excess of forty-four (44) hours worked during the aforesaid work-week at a rate less than one and one-half ($1\frac{1}{2}$) times the regular rate at which he was employed.

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such cases made and provided (Fair Labor Standards Act of 1938).

COUNT SEVEN

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that:

1. Each and every allegation contained in paragraphs 1 to 8, inclusive, of Count One of this Indictment is here realleged with the same force and effect as if here set forth in full.

2. The defendant Fred W. Darby, at F. W. Darby Lumber Company, at Statesboro, in the County of Bulloch, within the Southern District of Georgia, and within the jurisdiction of this court, did, within the meaning of the Fair Labor Standards Act of 1938, employ and suffer and permit to work in the buying, procuring, obtaining, producing, and manufacturing of goods, to wit, lumber, for interstate commerce, one Roger Stone for a workweek longer than forty-four (44) hours, beginning March 3, 1939, and ending March 9, 1939,

and the said defendant, at Statesboro, in the County of Bulloch, within the Southern District of Georgia, and within the jurisdiction of this court, on or about March 11, 1939, did unlawfully and wilfully fail to pay to the said Roger Stone, wages for the excess hours over forty-four (44) worked by the said Roger Stone during the workweek aforesaid, at a rate not less than one and one-half ($1\frac{1}{2}$) times the regular rate, at which the said Roger Stone was employed; that is to say, the said defendant did employ and suffer and permit to work in the production of goods, to wit, lumber, for interstate commerce, the said Roger Stone for a workweek longer than forty-four (44) hours, beginning March 3, 1939, and ending March 9, 1939, and at the time and place aforesaid, did pay compensation to the said Roger Stone for his employment in excess of forty-four (44) hours worked during the aforesaid workweek at a rate less than one and one-half ($1\frac{1}{2}$) times the regular rate at which he was employed.

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such cases made and provided (Fair Labor Standards Act of 1938).

COUNT EIGHT

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that:

1. Each and every allegation contained in paragraphs 1 to 8, inclusive, of Count One of this Indictment is here realleged with the same force and effect as if here set forth in full.

2. The defendant, Fred W. Darby, at F. W. Darby Lumber Company, at Statesboro, in the County of Bulloch, within the Southern District of Georgia, and within the jurisdiction of this Court, did, within the meaning of the Fair Labor Standards Act of 1938, employ and suffer and permit to work in the buying, procuring, obtaining, producing, and manufacturing of goods, to wit, lumber, for interstate commerce, one Carl Riggs, for a workweek longer than forty-four (44) hours, beginning March 3, 1939, and ending March 9, 1939, and the said defendant, at Statesboro, in the County of Bulloch, within the Southern District of Georgia, and within the jurisdiction of this court, on or about March 11, 1939, did unlawfully and wilfully fail to pay to the said Carl Riggs wages for the excess hours over forty-four (44) worked by the said Carl Riggs during the workweek aforesaid, at a rate not less than one and one-half ($1\frac{1}{2}$) times the regular rate, at which the said Carl Riggs was employed; that is to say, the said defendant did employ and suffer and permit to work in the production of goods, to wit, lumber, for interstate commerce, the said Carl Riggs for a workweek longer than forty-four hours, beginning March 3, 1939, and ending March 9, 1939, and at the time and place aforesaid, did pay compensation to the said Carl Riggs for his employment in excess of forty-four (44) hours worked during the aforesaid workweek at a rate less than one and one-half ($1\frac{1}{2}$) times the regular rate at which he was employed.

8
UNITED STATES VS. F. W. DARBY LUMBER CO.

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such cases made and provided (Fair Labor Standards Act of 1938).

COUNT NINE

And the Jurors aforesaid, upon their oath aforesaid, do further present that:

1. Each and every allegation contained in paragraphs 1 to 8, inclusive, of Count One of this Indictment is here realleged with the same force and effect as if here set forth in full.

2. The defendant Fred. W. Darby, at F. W. Darby Lumber Company, at Statesboro, in the County of Bulloch, within the Southern District of Georgia, and within the jurisdiction of this Court, did, within the meaning of the Fair Labor Standards Act of 1938, employ and suffer and permit to work in the buying, procuring, obtaining, producing, and manufacturing of goods, to wit, lumber, for interstate commerce, one Joe Little, for a workweek longer than forty-four (44) hours, beginning March 3, 1939, and ending March 9, 1939, and the said defendant, at Statesboro, in the County of Bulloch, within the Southern District of Georgia, and within the jurisdiction of this court, on or about March 11, 1939, did unlawfully and wilfully fail to pay to the said Joe Little wages for the excess hours over forty-four (44) worked by the said Joe Little during the workweek aforesaid, at a rate not less than one and one-half ($1\frac{1}{2}$) times the regular rate, at which the said Joe Little was employed; that is to say, the said defendant did employ and suffer and permit to work in the production of goods, to wit, lumber, for interstate commerce, the said Joe Little for a workweek longer than forty-four (44) hours, beginning March 3, 1939, and ending March 9, 1939, and at the time and place aforesaid, did pay compensation to the said Joe Little for his employment in excess of forty-four (44) hours worked during the aforesaid workweek at a rate less than one and one-half ($1\frac{1}{2}$) times the regular rate at which he was employed.

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such cases made and provided (Fair Labor Standards Act of 1938).

COUNT TEN

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that:

1. Each and every allegation contained in paragraphs 1 to 8, inclusive, of Count One of this Indictment is here realleged with the same force and effect as if here set forth in full.

2. The defendant, Fred. W. Darby, at F. W. Darby Lumber Company, at Statesboro, in the County of Bulloch, within the Southern District of Georgia, and within the jurisdiction of this Court, did, within the meaning of the Fair Labor Standards Act of 1938, employ and suffer and permit to work in the buying, procuring, obtaining, pro-

14. ducing and manufacturing of goods, to wit, lumber, for interstate commerce, one Sylvester Harvey for a workweek longer than forty-four (44) hours, beginning March 3, 1939, and ending March 9, 1939, and the said defendant, at Statesboro, in the County of Bulloch, within the Southern District of Georgia, and within the jurisdiction of this court, on or about March 11, 1939, did unlawfully and wilfully fail to pay to the said Sylvester Harvey wages for the excess hours over forty-four (44) worked by the said Sylvester Harvey during the workweek aforesaid, at a rate not less than one and one-half ($1\frac{1}{2}$) times the regular rate, at which the said Sylvester Harvey was employed; that is to say, the said defendant did employ and suffer and permit to work in the production of goods, to wit, lumber, for interstate commerce, the said Sylvester Harvey for a workweek longer than forty-four (44) hours, beginning March 3, 1939, and ending March 9, 1939, and at the time and place aforesaid, did pay compensation to the said Sylvester Harvey for his employment in excess of forty-four (44) hours worked during the aforesaid workweek at a rate less than one and one-half ($1\frac{1}{2}$) times the regular rate at which he was employed.

Against the peace and dignity of the United States of America, and contrary to the form of the Statute in such cases made and provided (Fair Labor Standards Act of 1938).

COUNT ELEVEN

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that:

1. Each and every allegation contained in paragraphs 1 to 8, inclusive, of Count One of this Indictment is here realleged with the same force and effect as if here set forth in full.

2. The defendant Fred. W. Darby, at F. W. Darby Lumber Company, at Statesboro, in the County of Bulloch, within the Southern District of Georgia, and within the jurisdiction of this Court, did, within the meaning of the Fair Labor Standards Act of 1938, employ and suffer and permit to work in the buying, procuring, obtaining, producing, and manufacturing of goods, to wit, lumber, for interstate commerce, one Ben McBride for a workweek longer than forty-four (44) hours, beginning March 3, 1939, and ending March 9, 1939, and the said defendant, at Statesboro, in the County of Bulloch, within the Southern District of Georgia, and within the jurisdiction of this court, on or about March 11, 1939, did unlawfully and wilfully fail to pay to the said Ben McBride wages for the excess hours over forty-four (44) worked by the said Ben McBride during the workweek aforesaid, at a rate not less than one and one-half ($1\frac{1}{2}$) times the regular rate, at which the said Ben McBride was employed; that is to say, the said defendant did employ and suffer and permit to work in the production of goods, to wit, lumber, for interstate commerce, the said Ben McBride for a workweek longer than forty-four (44) hours, beginning March 3, 1939, and ending March 9, 1939, and

at the time and place aforesaid, did pay compensation to the said Ben McBride for his employment in excess of forty-four (44) hours worked during the aforesaid workweek at a rate less than one and one-half ($1\frac{1}{2}$) times the regular rate at which he was employed.

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such cases made and provided (Fair Labor Standards Act of 1938).

COUNT TWELVE

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that:

1. Each and every allegation contained in paragraphs 1 to 8, inclusive, of Count One of this Indictment is here realleged with the same force and effect as if here set forth in full.

2. On October 21, 1938, the duly appointed Administrator of the Wage and Hour Division of the United States Department of Labor, pursuant to authority vested in him by Section 11 (c) of the Fair Labor Standards Act of 1938, duly issued regulations on records to be kept by employers subject to any provision of the Fair Labor Standards Act of 1938. The said regulations were published in the 16 Federal Register on October 22, 1938, and are known as Title 29, Chapter V, Code of Federal Regulations, Part 516. The said regulations require every employer subject to any provisions of the Fair Labor Standards Act of 1938 to make and preserve records setting forth, among other things, the hours worked each workday and each workweek by each person employed by him.

3. The defendant, Fred. W. Darby, at the F. W. Darby Lumber Company, at Statesboro, in the County of Bulloch, in the Southern District of Georgia, and within the jurisdiction of this court, during the period from October 24, 1938, up to, on or about September 15, 1939, did unlawfully and willfully fail to make, keep, and preserve a record required to be made, kept, and preserved by the statute and by the regulations duly issued thereunder, and hereinbefore referred to and known as Title 29, Chapter V, Code of Federal Regulations, Part 516, to wit, a record of the hours worked each workday and each workweek by each person employed, within the meaning of the Fair Labor Standards Act of 1938, by defendant, including persons so employed in the production and manufacture of goods, to wit, lumber, for interstate commerce.

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such cases made and provided (Fair Labor Standards Act of 1938).

COUNT THIRTEEN

The Grand Jurors aforesaid, upon their oath aforesaid, do further present that:

1. Each and every allegation contained in paragraphs 1 to 8, inclusive, of Count One of this Indictment, is here realleged with the same force and effect as if here set forth in full.

2. The F. W. Darby Lumber Company, and the defendant, Fred W. Darby on or about March 7, 1939, at Savannah, Georgia, within the Southern District of Georgia, and within the jurisdiction of this Court, did unlawfully and wilfully transport, ship, and deliver from a point in the State of Georgia, to a point without the State of Georgia, and in Gainesville, Florida, a shipment identified by Atlantic Coast Line Railroad bill of lading dated March 7, 1939, containing goods, to wit, lumber, which the defendant had cut and produced by Daniel B. Gay, knowing that in the cutting and production of goods, to wit, lumber, Daniel B. Gay intended the said lumber would be shipped in interstate and foreign commerce, and that Daniel B. Gay employed in the production of said lumber, employees, within the meaning of the Fair Labor Standards Act of 1938, to whom he failed to pay wages at a rate not less than twenty-five cents (25¢) an hour, and to whom Daniel B. Gay paid wages at a rate less than twenty-five cents (25¢) an hour.

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such cases made and provided (Fair Labor Standards Act of 1938).

COUNT FOURTEEN

The Grand Jurors aforesaid, upon their oath aforesaid, do further present that:

1. Each and every allegation contained in paragraphs 1 to 8, inclusive, of Count One of this Indictment, is here realleged with the same force and effect as if here set forth in full.

2. The F. W. Darby Lumber Company, and the defendant, Fred W. Darby, on or about May 17, 1939, at Savannah, Georgia, within the Southern District of Georgia, and within the jurisdiction of this court, did unlawfully and wilfully ship and deliver from a point within the State of Georgia, to a point without the State of Georgia, and in New York City, New York, a shipment identified by Ocean Steamship Company bill of lading, dated May 17, 1939, containing goods, to wit, lumber, which the defendant had cut and produced by Daniel B. Gay, knowing that in the cutting and production of goods, to wit, lumber, Daniel B. Gay intended the said lumber would be shipped in interstate and foreign commerce, and that Daniel B. Gay employed in the production of said lumber, employees within the meaning of the Fair Labor Standards Act of 1938, to whom he failed to pay wages at a rate not less than twenty-five cents (25¢) an hour and to whom Daniel B. Gay paid wages at a rate less than twenty-five cents (25¢) an hour.

COUNT FIFTEEN

The Grand Jurors aforesaid on their oath aforesaid, do further present that:

1. Each and every allegation, contained in paragraphs 1 to 8, inclusive, of Count One of this Indictment, is here realleged with the same force and effect as if here set forth in full.

2. The F. W. Darby Lumber Company, and the defendant, Fred W. Darby on or about December 2, 1938, at Statesboro, Georgia, within the Southern District of Georgia, and within the jurisdiction of this Court, did unlawfully and wilfully transport, ship, and deliver from a point in the State of Georgia, to a point without the State of Georgia, and in Orangeburg, South Carolina, a shipment identified by F. W. Darby Lumber Company invoice Number 4552, containing goods, to wit, lumber, which the defendant had cut and produced by Daniel B. Gay, knowing that in the cutting and production of goods, to wit, lumber, Daniel B. Gay intended the said lumber would be shipped in interstate and foreign commerce, and that Daniel B. Gay employed in the production of said lumber, employees within the meaning of the Fair Labor Standards Act of 1938, to whom he failed to pay wages at a rate not less than twenty-five cents (25¢) an hour and to whom Daniel B. Gay paid wages at a rate less than 25¢ an hour.

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such cases made and provided (Fair Labor Standards Act of 1938).

COUNT SIXTEEN

The Grand Jurors aforesaid, upon their oath aforesaid, do further present that:

1. Each and every allegation contained in paragraphs 1 to 8, inclusive, of Count One of this Indictment, is here realleged with
19 the same force and effect as if here set forth in full.

2. The F. W. Darby Lumber Company, and the defendant Fred W. Darby on or about August 8, 1939, at Statesboro, Georgia, within the Southern District of Georgia, and within the jurisdiction of this court, did unlawfully and wilfully transport, ship, and deliver from a point in the State of Georgia, to a point without the State of Georgia, and in Toledo, Ohio, a shipment identified by F. W. Darby Lumber Company invoice number 6760-B, containing goods, to wit, lumber, which the defendant had cut and produced by Daniel B. Gay knowing that in the cutting and production of goods, to wit, lumber, Daniel B. Gay intended the said lumber would be shipped in interstate and foreign commerce, and that Daniel B. Gay employed in the production of said lumber, employees, within the meaning of the Fair Labor Standards Act of 1938, to whom he failed to pay wages at a rate not less than twenty-five cents (25¢) an hour and to whom Daniel B. Gay paid wages at a rate less than twenty-five cents (25¢) an hour.

Against the peace and dignity of the United States of America, and contrary to the form of the Statute in such cases made and provided (Fair Labor Standards Act of 1938).

COUNT SEVENTEEN

The Grand Jurors aforesaid, upon their oath aforesaid, do further present that:

1. Each and every allegation contained in paragraphs 1 to 8, inclusive, of Count One of this Indictment is here realleged with the same force and effect as if here set forth in full.

2. The F. W. Darby Lumber Company, and the defendant Fred. W. Darby, on or about March 7, 1939, and in Statesboro, in the County of Bulloch, within the Southern District of Georgia, and within the jurisdiction of this court, unlawfully and wilfully transported, shipped, and delivered from a point within the State of Georgia and to a point without the State of Georgia, and in the State of Florida, processed and finished lumber, identified by Atlantic Coast Line Railroad bill of lading, dated March 7, 1939, said processed and finished lumber manufactured and produced for interstate commerce, in the production and manufacture of which the defendant had employed employees to whom the defendant had failed to pay wages at a rate not less than twenty-five cents (25¢) an hour and to whom the defendant had paid wages at a rate less than twenty-five cents (25¢) an hour.

Against the peace and dignity of the United States of America, and contrary to the form of the Statute in such cases made and provided (Fair Labor Standards Act of 1938).

COUNT EIGHTEEN

And the Grand Jurors aforesaid, on their oath aforesaid do further present that:

1. Each and every allegation contained in paragraphs 1 to 8, inclusive, of Count One of this Indictment is here realleged with the same force and effect as if here set forth in full.

2. The F. W. Darby Lumber Company, and the defendant Fred. W. Darby, on or about March 7, 1939, and in Statesboro, in the County of Bulloch, within the Southern District of Georgia, and within the jurisdiction of this Court, unlawfully and wilfully, transported, shipped, and delivered from a point within the State of Georgia, to a point without the State of Georgia, and in the State of Florida processed and finished lumber, identified by Atlantic Coast Line Railroad bill of lading, dated March 7, 1939, said processed and finished lumber being manufactured and produced for interstate commerce in the production of which the defendant had employed employees in excess of forty-four (44) hours in one workweek, and to whom the defendant failed to pay wages at a rate not less than one and one-half ($1\frac{1}{2}$) times the regular rate for the excess hours over forty-four (44) hours so worked, and to whom the defendant paid wages at a rate less than one and one-half ($1\frac{1}{2}$) times the regular rate of pay for the hours worked in excess of forty-four (44) hours in said workweek.

Against the peace and dignity of the United States of America and contrary to the form of the statute in such cases made and provided (Fair Labor Standards Act of 1938).

COUNT NINETEEN

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that:

1. Each and every allegation contained in paragraphs 1 to 8, inclusive, of Count One of this Indictment is here realleged with the same force and effect as if here set forth in full.

2. The F. W. Darby Lumber Company, and the defendant Fred. W. Darby, on or about August 8, 1939, and at Statesboro, in the County of Bulloch, within the Southern District of Georgia, and within the jurisdiction of this Court, unlawfully and wilfully transported, shipped, and delivered from a point within the State of Georgia to a point without the State of Georgia, and in the State of Ohio, processed and finished lumber identified by F. W. Darby Lumber Company invoice Number 6760-B, said processed and finished lumber manufactured and produced for interstate commerce, in the production and manufacture of which the defendant had employed employees to whom the defendant had failed to pay wages at a rate not less than twenty-five cents (25¢) an hour and to whom the defendant had paid wages at a rate less than twenty-five cents (25¢) an hour.

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such cases made and provided (Fair Labor Standards Act of 1938).

A true bill.

(Signed) R. R. HOLLAND,
R. R. Holland,

Foreman of the Grand Jury.

(Signed) H. DOUGLAS WEAVER,
H. Douglas Weaver,

Special Assistant to the Attorney General.

(Signed) CLYDE E. VINCENT,
Clyde E. Vincent,

Special Assistant to the Attorney General.

(Signed) GEORGE A. DOWNING,
George A. Downing,

Special Assistant to the United States Attorney.

(Signed) J. SAXTON DANIEL,
United States Atty.

22 [File endorsement omitted.]

23 In United States District Court

[Title omitted.]

Defendant's demurrer

Filed Feb. 16, 1940

Now comes the defendant, Fred. W. Darby, and before pleading to the indictment in the above stated case, demurs thereto, and moves

to quash the same, and for grounds of his demurrer and motion to quash says:

1. The said indictment does not allege facts sufficient to constitute a crime within the provisions of any valid statute of the United States of America.

2. The said indictment fails to advise this defendant of the nature of the charge against him, or to advise him in what manner he has violated the law.

3. Said indictment fails to state an offense of which this Court may take cognizance, or has jurisdiction, in that it fails to charge that the manufacture, production, or sale of lumber is trade or commerce among the several States or constitutes interstate commerce.

4. The averments of said indictment fail to state the acts and things constituting the offense therein charged with sufficient particularity to inform this defendant of the nature of the charge against him, in that

(a) The amounts paid by defendant to the employees mentioned in counts 1 to 11, inclusive, and the number of hours worked by each of said employees during any work week are not alleged;

(b) When the lumber mentioned in counts 13, 14, 15, and 16 of said indictment was cut and produced by Daniel B. Gay is not alleged; and

(c) When the lumber mentioned in counts 17, 18, and 19 was manufactured and produced is not alleged.

5. The Fair Labor Standards Act of 1938 (52 Stat. 1060, et seq., 29 U. S. C. Section 201, et seq.) in so far as it attempts to prescribe minimum wages which must be paid by employers to employees and the minimum hours an employer may employ his employees, during a work week, without the payment of a rate not less than one and one-half times the regular rate at which he is employed; as applied to this defendant, is unconstitutional, null and void, for that:

(a) The same is beyond the power conferred upon the Congress by Article I, Section 8 of the Constitution of the United States;

(b) The same is violative of the due process of law clause of the Fifth Amendment of the Constitution of the United States;

(c) The same is violative of the clause of the Sixth Amendment of the Constitution of the United States which requires in all criminal prosecutions that the accused shall be informed of the nature and cause of the accusation;

(d) The power which Congress has sought to exercise is not one of the powers delegated to the United States by the Constitution, but is among the reserved powers of the States under the Tenth Amendment of the Constitution of the United States.

6. The criminal penalties sought to be imposed by the Fair Labor Standards Act of 1938 constitute excessive fines and cruel and unusual punishment, in violation of the Eighth Amendment of the Constitution of the United States.

7. Section 3 (m) of the Fair Labor Standards Act of 1938 is unconstitutional, null and void, if applied against this defendant, for that it violates the due process clause of the Fifth Amendment of the Constitution of the United States and also violates Article 1, Section 1 of the said Constitution in that it attempts to delegate legislative authority to the Executive Department of the United States, without establishing sufficient, definite or ascertainable standards for the exercise of the authority sought to be delegated.

WHEREFORE, defendant prays that these, his grounds of demurrer, be inquired of by the Court, considered and sustained, and that said indictment be quashed.

HITCH DENMARK & LOVETT,
Attorneys for Defendant.

(Signed) A. B. LOVETT,
Of Counsel,
17 Drayton Street, Savannah, Georgia.
[File endorsement omitted.]

25 In United States District Court for the Southern District of Georgia, Savannah, Georgia

No: 9175. Violations of Fair Labor Standards Act of 1938

UNITED STATES OF AMERICA

v.

F. W. DARBY LUMBER COMPANY AND FRED W. DARBY

Opinion

Filed April 30, 1940

WILLIAM H. BARRETT, *District Judge:*

Subsequent to the able oral arguments and the submission of thorough and exhaustive briefs in this case the Circuit Court of Appeals for the Fifth Circuit decided the case of *Opp Cotton Mills, Inc., v. Administrator Wage and Hour Division, Etc.* (April 2, 1940).

In the opinion in the *Opp* case is found this language: "We are of opinion and so hold that the enactment of the Fair Labor Standards Act was a valid exercise of the power given to Congress by the commerce clause of the federal constitution."

If such language is all-inclusive under all conditions this court is bound by such decision and will cheerfully follow the same. Apparently the Circuit Court of Appeals felt compelled to its conclusion by certain decisions of the Supreme Court of the United States. An accurate ascertainment of the scope of such language can be best revealed by a study of the cases which required it. The essential question here is: Does such decision control intrastate activities of the kind involved in the case at bar? I think not.

The cases relied upon by the Circuit Court of Appeals to compel its conclusion are as follows:

Mulford v. Smith, 307 U. S. 38. In this case we find this statement in headnote 2 (1):

"The statute does not purport to control production, but regulates commerce in tobacco through marketing."

Kentucky Whip & Collar Co. v. Illinois, Etc. R. R., 299 U. S. 334. This was an exercise of the power of Congress to aid states in the enforcement of state laws.

Labor Board v. Jones & Laughlin Steel Corp., 301 U. S. 1. In headnotes 7 and 8 of this case we find this statement of one of the principles controlling in such case:

"7. Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential, or appropriate, to protect that commerce from burdens and obstructions, Congress has the power to exercise that control.

"8. This power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace would then, in view of our complex society, effectually obliterate the distinction between what is national and what is local and create a completely centralized government. The question is necessarily one of degree."

Currin v. Wallace, 306 U. S. 1. After stating the regulation we find the following in headnote 2, subheads (1), (2), (3), and (4):

26 " (1) Such regulation, for the protection of sellers or purchasers, or both, is within the commerce power as respects the selling for transportation to other states or abroad; and in view of the manner of the selling at the auctions, where all transactions are conducted indiscriminately and virtually at the same time, Congress was authorized to apply its regulation to intrastate sales in order to make it effective as to the sales in interstate and foreign commerce.

" (2) The auction is a part of the sales consummated, notwithstanding that in the market practice the growers are not bound to accept bids, and in some instances reject them.

" (3) Regulations under the commerce clause may have the quality of police regulations.

" (4) The inspection and grading under the Act, though they take place before the auction, have immediate relation to the sales in interstate and foreign commerce."

Santa Cruz Co. v. Labor Board, 303 U. S. 453. On page 454 (headnotes 6 and 7), the following principle is stated:

" (6) Where federal control is sought to be exercised over activities which separately considered are intrastate, it must appear that there is a close and substantial relation to interstate commerce in order to justify the federal intervention for its protection.

"7. This principle is essential to the maintenance of our constitutional system."

Brooks v. United States, 267 U. S. 432. The extent of this decision is thus stated in headnote 1:

"The Act punishing the transportation of stolen motor vehicles in interstate of foreign commerce is within the power of Congress."

Lottery Case (Champion v. Ames, No. 2), 188 U. S. 321. The decision arose on a habeas corpus proceeding, and the extent of the decision is stated in headnote 3, as follows:

"Legislation prohibiting the carriage of such tickets is not inconsistent with any limitation or restriction imposed upon the exercise of the powers granted to Congress."

Hammer v. Dagenhart, 247 U. S. 251. The import of this decision may be well understood from the following headnotes:

"The power to regulate interstate commerce is the power to prescribe the rule by which the commerce is to be governed; in other words, to control the means by which it is carried on."

"The manufacture of goods is not commerce, nor do the facts that they are intended for, and are afterwards shipped in, interstate commerce make their production a part of that commerce subject to the control of Congress."

All except the two cases of Brooks v. United States and Champion v. Ames, above referred to, were civil cases and opportunity was afforded and used to investigate the facts connected with the alleged violations of law involved. In each case it was held that the particular facts therein authorized the law.

On June 5, 1939, the Supreme Court decided the case of United States v. Rock Royal Co-operative, 307 U. S. 533, which also was a civil case. The particular challenge involved in such case is the regulation of "the price to be paid upon the sale by a dairy farmer who delivers his milk to some country plant." It was held that such sale could be controlled, but the principle authorizing such control is that stated in headnote 11, page 536:

"Where milk sold by the dairy farmer locally and milk from other States are drawn into a general plan for protecting the interstate commerce in the commodity from the interferences, burdens, and obstructions arising from excessive surplus and the social and sanitary evils created by low prices, the power of Congress extends also to the local sales."

In the case at bar there are no charges of facts which bring the alleged violations within the ambit of which would make interstate commerce out of which is primarily intrastate activities. The controlling facts alleged which affect every charge made as to interstate commerce is no stronger than this, namely:

27 "4. At all times hereinafter referred to, a large proportion of the lumber bought, procured, obtained, produced, and manu-

factured by the defendant was bought, procured, obtained, produced, and manufactured by him pursuant to orders received by the defendant from customers without the State of Georgia. The said lumber was bought, procured, obtained, produced, and manufactured with the intent on the part of the defendant that the said lumber after having been bought, procured, obtained, produced, and manufactured would be sold, shipped, transported, and delivered to and the said lumber was sold, shipped, transported, and delivered to customers without the State of Georgia. In buying, procuring, obtaining, producing, and manufacturing the said lumber, the defendant produced and transported goods for interstate commerce within the meaning of the Fair Labor Standards Act of 1938."

There is no charge as to when the intent to ship was formed or abandoned; there is no charge that at the time of the production there was in existence any contract making the shipment a part of interstate commerce, and even as to the indefinite charge that "a large proportion of the lumber bought, procured, obtained, produced, and manufactured by the defendant was bought, procured, obtained, produced, and manufactured by him pursuant to orders received by the defendant from customers without the State of Georgia" there is no charge that such orders were of such an amount or nature as to directly affect interstate commerce or to become a flow of commerce or to come within any of the other conditions which would make the production of lumber, disconnected from interstate commerce at the time of production, a part of interstate commerce and subject to control by Congress.

The indictment charges that production was complete and that sale in interstate commerce was not made until after the production was completed. The essential constitutional question in reference to the interstate commerce clause is as to the meaning of the language of the

Act, Sec. 6:

28 "Every employer shall pay to each of his employees who is engaged in commerce or in the *production of goods for commerce* wages at the following rates" [italics ours].

If the language "in the production of goods for commerce" be limited to production which at the time of production was directly connected with interstate commerce or was coupled with some act or acts pertaining to and making such production a part of interstate commerce the Act is constitutional; but if the Act means, as this indictment charges, that the mere intent at the time of production that after production it may or will be sold in interstate commerce in part or in whole makes it a part of interstate commerce, the Act is unconstitutional. See *Hammer v. Dagenhart*, supra, declaring that manufacture is not commerce and intent to subsequently sell in interstate commerce does not make manufacturing commerce; and *Labor Board v. Jones & Laugh*, in, supra, declaring that intrastate activities cannot be controlled under the interstate commerce clause unless

such activities have "such a close and substantial relation to interstate commerce that their control is essential, or appropriate, to protect that commerce from burdens and obstructions."

The indictment charges nothing more than failure to pay minimum wages in production of goods with intent that such goods after production was completed would be connected with interstate commerce. There are no allegations notifying the defendant that such production in intrastate activities was so connected with interstate commerce as to justify the control of Congress under the commerce clause of the constitution.

No man should be put on trial in a criminal case unless he knows definitely what is the charge against him. In the absence of such definiteness as would justify the law under the interstate commerce clause the indictment must fall.

If Congress can under the interstate commerce clause provision of the constitution regulate state activities only when connected with interstate commerce or affecting interstate commerce in some of the ways and to the extent limited by decisions of the United States Supreme Court why should not the act of Congress so declare? Otherwise, and if the indictments are drawn similar to the one at bar, defendants would not be notified of the crimes with which they are charged. Under the interpretation of the indictment before us and of the Fair Labor Standards Act as urged by the government the regulation of labor would embrace not only (by illustration in the present case) the man who cut the timber or hauled it to the mill; but also the man who planted the seed and cultivated the trees. If the interstate commerce clause carries with it such power to thus create a centralized government as against an "indestructible union composed of indestructible states" (*Texas v. White*, 74 U. S. 725), the sooner it is known the better. It is my opinion that Congress has not yet gone to that extent and that if it has the Act is unconstitutional. Therefore the decision in the *Opp* case, which dealt with a situation where investigation had been had and findings promulgated, does not apply to a case of the kind at bar.

29 It therefore follows that the indictment is quashed. ^a

In view of the conclusion thus reached it is unnecessary to consider other constitutional questions that have been raised. This 27th day of April 1940.

(Signed) Wm. H. BARRETT,
United States Judge.

[File endorsement omitted.]



30 In United States District Court, Southern District of Georgia,
Savannah Division

No. 9175. Violations of Fair Labor Standards Act of 1938

UNITED STATES OF AMERICA

vs.

F. W. DARBY LUMBER COMPANY AND FRED W. DARBY

Judgment

Filed May 7, 1940

In accordance with the opinion rendered in the above cause on the 29th day of April, 1940, and for the reasons stated in said opinion, the general demurrer is sustained and said indictment is hereby quashed. This May 6th, 1940.

(Signed) WM. H. BARRETT,
United States Judge.

[File endorsement omitted.]

31 In United States District Court

[Title omitted.]

Petition for appeal

Filed May 13, 1940

Comes now the United States of America, plaintiff herein, and states that on the 6th day of May 1940 defendant's demurrer to the indictment herein was sustained and the indictment quashed, and the plaintiff being aggrieved at the ruling of the District Court in sustaining said demurrer to the indictment prays that it may be allowed to appeal to the Supreme Court of the United States for a reversal of said judgment and order, and that a transcript of the record in this cause duly authenticated may be sent to said Supreme Court of the United States.

Petitioner submits and presents to the Court herewith a statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this cause.

(Signed) J. SAXTON DANIEL,
J. Saxton Daniel,
United States Attorney.

(Signed) ROBERT L. STERN,
Robert L. Stern,
Special Assistant to the Attorney General.

[File endorsement omitted.]

[Title omitted.]

Order allowing appeal

Filed May 13, 1940

The United States having filed a petition for the allowance of an appeal to the Supreme Court of the United States from the order of this Court sustaining a general demurrer to the indictment herein and quashing said indictment, and the United States having filed a statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in said cause, it is

Ordered and adjudged that the United States of America be and it is hereby allowed an appeal from the order and judgment of this Court sustaining the demurrer and quashing the indictment, and that a duly certified copy of the record of this cause be transmitted to the Clerk of the Supreme Court and that a citation be issued as provided by law.

Dated this 13th day of May, 1940.

(Signed) WM. H. BARRETT,
United States District Judge.

[File endorsement omitted.]

[Title omitted.]

Assignment of errors

Filed May 13, 1940

Now comes the United States of America, having heretofore filed its petition for appeal herein from the order of this court sustaining the demurrer and quashing the indictment in this cause, and files the following assignment of errors:

1. The court erred in holding that the Fair Labor Standards Act, as applied to the activities alleged in the indictment, is not a valid exercise of the federal commerce power.

2. The court erred in holding that the Fair Labor Standards Act is not to be construed as applying to the activities alleged in the indictment.

3. The court erred in holding the Fair Labor Standards Act unconstitutional if applied to persons engaged in the production of lumber to be shipped in interstate commerce, and that accordingly the Act should be construed so as not to cover such employees.

4. The court erred in failing to hold that Section 15 (a) (1) of the Fair Labor Standards Act, which prohibits the shipment in interstate

commerce of goods in the production of which employees were employed in violation of Sections 6 or 7 of said Act, is a valid exercise of the federal commerce power.

5. The court erred in failing to hold that Section 15 (a) (2) of the Fair Labor Standards Act, which makes it unlawful for an employer to violate the provisions of Sections 6 and 7 of the said Act with respect to employees engaged in the production of goods for interstate commerce, is a valid exercise of the federal commerce power.

6. The court erred in failing to hold that Section 15 (a) (5) of the Fair Labor Standards Act, which makes it unlawful for an employer to fail to keep certain records with respect to wages and hours, as required by Section 11 (c) of the Act and regulation issued pursuant thereto, is a valid exercise of the federal commerce power.

7. The court erred in failing to hold that the aforesaid provisions of the Fair Labor Standards Act are constitutional as applied to defendant, a producer and purchaser of lumber who sells such lumber in interstate commerce.

8. The court erred in failing to hold that the aforesaid provisions of the Fair Labor Standards Act apply to defendant, a producer and purchaser of lumber who sells such lumber in interstate commerce.

9. The court erred in sustaining the general demurrer and in quashing the indictment.

Wherefore, the United States of America respectfully prays that the action taken by the court in sustaining the general demurrer and in quashing the indictment be set aside and held for naught.

(Signed) J. SAXTON DANIEL,
J. Saxton Daniel,
United States Attorney.

(Signed) ROBERT L. STERN,
Robert L. Stern,
Special Assistant to the Attorney General.

[File endorsement omitted.]

41 [Citation in usual form filed May 13, 1940, omitted in printing.]

[Title omitted.]

Praecipe for transcript of record

Filed May 13, 1940

To the Clerk, United States District Court, Southern District of Georgia, Savannah Division:

The appellant hereby directs that in preparing the transcript of the record in the above entitled cause for its appeal to the Supreme Court of the United States you include the following:

1. Indictment.
2. Demurrer.
3. Opinion.
4. Order and Judgment Sustaining Demurrer.
5. Petition for Appeal.
6. Order Allowing Appeal.
7. Assignment of Errors.
8. Statement of Jurisdiction of the Supreme Court of the United States.
9. Proof of Service on Appellee of Petition for Appeal, Order Allowing Appeal, Assignment of Errors, and Statement as to Jurisdiction.
10. Citation.
11. This Praecipe.

(Signed) J. SAXTON DANIEL,
J. Saxton Daniel,
United States Attorney.

(Signed) ROBERT L. STERN,
Robert L. Stern,
Special Assistant to the Attorney General.

[File endorsement omitted.]

43 [Clerk's certificate to foregoing transcript omitted in printing.]

44 In the Supreme Court of the United States

Statement of points to be relied upon and designation of record to be printed

Filed June 8, 1940

I

The United States of America, appellant, states that in its brief and oral argument on its appeal in the above entitled cause it will rely upon the points stated in its assignment of errors therein.

II

The entire record in this case as filed in this Court is necessary for consideration of the points stated by appellant, and the entire transcript of record as transmitted by the Clerk of the District Court should be printed by the Clerk of this Court.

FRANCIS BIDDLE,
Francis Biddle,
Solicitor General.

JUNE 4, 1940.

Service of a copy of the above Statement of Points and Designation of Record to be Printed acknowledge June —, 1940.

A. B. LOVETT,
Counsel for appellee.

[File endorsement omitted.]

[Endorsement on cover:] File No. 44424. S. Georgia, D. C. U. S. Term No. 82. The United States of America, appellant, vs. F. W. Darby Lumber Company and Fred. W. Darby. Filed May 18, 1940. Term No. 82 O. T. 1940.